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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,131	11/26/2002	Gary E. Choate	600-3001	8468

7590 09/24/2004

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EXAMINER

FOX, CHARLES A

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 09/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/831,131	Applicant(s) CHOATE ET AL.	
	Examiner Charles A. Fox	Art Unit 3652	<i>NW</i>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 June 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

This application has been reassigned to examiner Charles A. Fox.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 16-31 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Independent claims 16,22,26 and 31 all have the limitation that the device be "man-rated" as defined by OSHA. Applicants own disclosure presents evidence that their device can not meet the OSHA requirements. On page 7 lines 14-28 applicant states that the anchorage structure of their device can withstand a force of up to 1312.5 ft-lbs. To meet the OSHA requirement of being a man-rated device the device must be able to withstand a force of 1320 ft-lbs. As the anchorage structure of the applicant device can not withstand the forces needed to meet the OSHA requirements the limitation of the device being man-rated is not supported by the specification. The limitation must be removed from the claims in order to render this rejection moot. In the rejections below man-rated is simply treated as having the ability to lift person.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16,17,20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Avila, Jr. in view of Downs. Avila, Jr. US 3,978,989 teaches a device for lifting loads comprising:

multiple modular components;

a base (1) mounted in proximity to an associated structure;

a cylindrical member (30) removable connected to said base via member (b);

means (59) for securing a load to said cylindrical member;

wherein said base is a transformer type member; (see figure1.)

wherein member (b) is a telescopic member allowing the height of the device to be changed to suit a users needs;

wherein the device is designed to be light weight and portable. He does not teach the device as being made of any particular material or having a winch.

Downs UK 2,260,751 A teaches a device for lifting a person comprising:

a portable frame (10);

a winch (25) secured to a mast for hoisting a person;

a means ((29) for removable securing a person to the device;

wherein the structural members of the device are made of a carbon-fiber material that is lighter than they would be if made of steel;

a base (11) that is cast and free of welds. Downs does not teach his device as being modular.

It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Avila, Jr. with a winch and carbon-fiber components as taught by Downs in order to easily lift a person on a device that is light in weight, yet portable, thus making it easier to set up the device in an area that it is need.

Claims 18 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Avila, Jr. and Downs as applied to claim 16 above, and further in view of Allsop et al. Avila, Jr. and Downs teach the limitations of claim 16 as above, they do not teach reinforcing the composite material. Allsop et al. teach making a device of carbon-fiber tubing and reinforcing said tubing with metal inserts at key joints. It would have been obvious to one of ordinary skill in the art, at the time of invention to reinforce the joints of the device taught by Avila, Jr. and Downs in the manner taught by Allsop et al. in order to increase the structural integrity of the device.

Claims 22 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Avila, Jr. in view of Downs and further in view of Daniels. Avila, Jr. teaches a device for lifting loads comprising:

multiple modular components;

a base (1) mounted in proximity to an associated structure;

a cylindrical member (30) removable connected to said base via member (b);
means (59) for securing a load to said cylindrical member;
wherein said base is a transformer type member; (see figure1.)
wherein member (b) is a telescopic member allowing the height of the device to
be changed to suit a users needs;
wherein the joints of all pieces are made to be taken apart;
wherein the device is designed to be light weight and portable. He does not teach
the device as being made of any particular material and having an elbow or having a
winch.

Downs A teaches a device for lifting a person comprising:
a portable frame (10);
a winch (25) secured to a mast for hoisting a person;
a means ((29) for removable securing a person to the device;
wherein the structural members of the device are made of a carbon-fiber material
that is lighter than they would be if made of steel;
a base (11) that is cast and free of welds. He does not teach the device as
having an elbow.

Daniels US 5,083,395 teaches a lifting device comprising:
a series of tubular members;
an elbow for extending a leg of the device at an angle from a central upright axis;
wherein the device is broken down for ease of transport;

with the elbow being asymmetric with one leg shorter than the other. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Avila, jr. with carbon-fiber components as taught by Downs and an elbow as taught by Daniels in order to decrease the weight of the device for easier carrying and to use fewer parts to make the arm assembly, thereby making the device easier to transport and setup.

Claims 23 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over Avila, Jr., Downs and Daniels as applied to claim 22 above, and further in view of the admitted prior art. Avila, Jr. , Downs and Daniels teach the limitations of claim 22 as above, they do not teach using interchangeable members to change the size of the post or extension arm. The admitted prior art teaches a steel hoist with sections of various lengths allowing for various offsets from the post to be obtained. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Avila, Jr. , Downs and Daniels with sections of different lengths to allow the device to operate as needed in a confined space, and that the length of any section would be selected to meet the instant needs of an operator and such sizes would have been obvious to one of ordinary skill in the art.

Claims 26,30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Avila, Jr. in view of Daniels. Avila, Jr. teaches a device for lifting loads comprising:

- multiple modular components;
- a base (1) mounted in proximity to an associated structure;
- a cylindrical member (30) removable connected to said base via member (b);

means (59) for securing a load to said cylindrical member;

wherein said base is a transformer type member; (see figure1.)

wherein member (b) is a telescopic member allowing the height of the device to be changed to suit a users needs;

wherein the device is designed to be light weight and portable. He does not teach the device as having a winch or an elbow.

Daniels teaches a lifting device comprising:

a series of tubular members;

an elbow for extending a leg of the device at an angle from a central upright axis;

wherein the device is broken down for ease of transport;

with the elbow being asymmetric with one leg shorter than the other. It would have been obvious to one of ordinary skill in the art, at the time of invention to modify the device taught by Avila, jr. with components as taught by Daniels in order to decrease the weight of the device for easier carrying and to use fewer parts to make the arm assembly, thereby making the device easier to transport and setup.

Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Avila, Jr. and Daniels as applied to claim 26 above, and further in view of Downs. Avila, Jr. and Daniels teach the limitations of claim 26 as above, they do not teach any particular type of material for the device. Downs teaches using carbon-fiber to form the post and arm of a lifting device. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Avila, Jr. and Daniels with carbon-fiber

components as taught by Downs in order to decrease the weight of said components, thereby making the device easier to move.

Claims 28 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Avila, Jr. and Daniels as applied to claim 26 above, and further in view of the admitted prior art. Avila, Jr. and Daniels teach the limitations of claim 26 as above, they do not teach providing a variety of different length sections in their device. The admitted prior art teaches providing a lifting device for confined spaces with a plurality of different lengths of interchangeable sections. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the device taught by Avila, Jr. and Daniels with the interchangeable parts as taught by the admitted prior art in order to allow the device to be set up to meet the instant needs of the operator.

Response to Amendment

The amendments to the claims and drawings filed on June 3, 2004 have been entered into the record.

Response to Arguments

Applicant's arguments filed on June 3, 2004 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles A. Fox whose telephone number is 703-605-4294. The examiner can normally be reached between 7:00-5:00 Monday-Thursday.

Art Unit: 3652

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen D. Lillis can be reached at 703-308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

CAF

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9-20-04



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